

January 4, 2017

21st Century Cures Act - Small Employer HRA Guidance

The Affordable Care Act (ACA) changed the health reimbursement account (HRA) landscape significantly. Provisions under the ACA include a general prohibition on certain premium reimbursement plans, HRAs, and other types of medical expense reimbursement plans offered by employers to help employees pay for health insurance premiums or medical expenses. Many employers have had to terminate stand-alone HRAs for active employees or modify HRA offerings to integrate their HRAs with other major medical coverage in order to meet the preventive services mandate and the prohibition on annual and lifetime limits for essential health benefits provisions under the ACA. Conner Strong & Buckelew's last Update on HRAs [Additional Guidance on Health Reimbursement Arrangements \("HRAs"\)](#) provides a comprehensive overview of the ACA's impact on HRAs.

Historically, many small employers relied on HRAs to offer employees some form of assistance with health care cost. In an effort to allow small employers to continue providing healthcare cost assistance to their employees, an exception to the general prohibition on stand-alone HRAs to active employees was created for small employers, permitting small employers to offer stand-alone HRAs without the hefty \$100 per day excise tax associated with violations under the ACA. Under IRS [Notice 2015-17](#), this exemption for small employers was effective until June 30, 2015.

The 21st Century Cures Act, signed into law on December 13, 2016, now extends this HRA small employer exemption to the end of 2016, and permits a new form of HRA called the qualified small employer health reimbursement arrangement (QSEHRA). Beginning in 2017, small employers as defined under the ACA, i.e., with less than 50 full-time employee equivalents, may begin offering QSEHRA under the following guidelines:

- The small employer offering a QSEHRA cannot offer any other group health plan to employees.
- The QSEHRA must pay or reimburse the qualified medical expenses of an employee and family members (as defined under the plan), and may reimburse employees for health insurance premiums for individual policies, including Marketplace coverage.
- Reimbursement under the QSEHRA is subject to an annual statutory limit. The limits for 2017 are \$4,950 and \$10,000 for employee-only coverage and family coverage respectively. Limits must be prorated for partial year coverage periods and the limits in future years are subject to cost of living adjustments.
- Like existing HRAs, the QSEHRA must be 100% employer paid and no employee contributions are permitted.

- Generally, all employees of the employer must be eligible for the QSEHRA under the same terms, but the following employees may be excluded:
 - Part-time and seasonal employees
 - Employees under 25 years of age
 - Employees with less than 90 days of service
 - Non-resident aliens without earned income from U.S. based sources
 - Employees under a collective bargaining agreement

Note too that a QSEHRA may impact an individual's eligibility for a premium subsidy (tax credit) for Marketplace coverage. Individuals with affordable health coverage (costing 9.69% or less of household income in 2017) due to the QSEHRA, will not be eligible for a Marketplace premium subsidy. Individuals with a QSEHRA but whose health coverage is unaffordable (more than 9.69% of household income) may still be eligible for a premium subsidy, but the amount of the subsidy will be reduced by the amount of the QSEHRA. Also, employers offering QSEHRAs are subject to the IRS information reporting requirement (Form 1095-B) as a provider of minimum essential coverage.

Small employers offering QSEHRAs must provide a notice to employees describing the amount of the QSEHRA. Employers must also inform individuals of their requirement to notify the Marketplace, when applying for a premium subsidy, of the amount of their QSEHRA. The notice must also contain a statement explaining that if an individual does not have minimum essential coverage for a given month, the individual may be subject to a tax penalty under the Individual Mandate. The guidance also provides that QSEHRA are excluded from the definition of a group health plan under ERISA, meaning these arrangements are not subject to COBRA or the ACA.

Recent [FAQs](#) provide some additional clarifying guidance on HRAs and also confirm that applicable large employers (50 or more full-time employee equivalents) are not permitted to offer a QSEHRA. Thus, large employers are still prohibited from offering stand-alone HRAs arrangements to active employees, but can contribute to HRAs that are integrated with other group health plan coverage. Many business groups support giving employers the option of subsidizing premiums for employees' purchase of individual coverage, as happens often with retiree coverage. More changes could be coming for HRAs, as efforts by the new President and Congress to repeal and replace the ACA may affect these rules and the future of HRAs for large employers.

Should you have questions about this or any aspect of federal health insurance reform, please contact your Conner Strong & Buckelew account representative toll free at 1-877-861-3220. For a complete list of Legislative Updates issued by Conner Strong & Buckelew, visit our online [Resource Center](#).



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